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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 5, 1998

APPLICATION OF

VYVX OF VIRGINIA, INC.

CASE NO. PUC970047

For a certificate of public
convenience and necessity to
provide interexchange
telecommunications services
and to have its rates
determined competitively

ORDER ON REQUEST FOR HEARING
AND RULE TO SHOW CAUSE

On March 23, 1998, the Staff of the State Corporation Commission ("Staff") filed a Request for Hearing. Staff requested the Commission hear the matters set out in its Motion for a Rule to Show Cause and for Temporary Injunction and its Reply and Motion to Amend Motion for Rule to Show Cause. Staff further requested the Commission hear the matters set out in the application of Vyvx of Virginia, Inc., ("Vyx" or "Company"). The remaining application issues relate to Vyvx' request for a certificate of public convenience and necessity to construct telecommunications facilities in the Commonwealth.

The Motion for Rule to Show Cause and for Temporary Injunction asserted, in essence, that Vyvx was constructing its facility without benefit of certification and it requested the

Commission to issue a Rule requiring Vyvx to show cause why it should not be sanctioned and further requested an injunction of further construction by the Company of the facilities.

In response, Vyvx argued that it was not in violation of any Commission order and that the construction of the facilities was being conducted by its affiliated parent company under authority of the Federal Communications Commission.

Following this response, the Staff filed its Motion to Amend Motion for Rule to Show Cause, asking the Commission to treat Vyvx and its parent as the same legal entity herein and enjoin construction activity of either. In the alternative, Staff moved the Commission to require Vyvx to show cause why its certificate to provide intrastate interLATA telecommunications should not be revoked.

The Commission received an additional request for hearing on March 23, 1998, filed by counsel on behalf of John and Janete Cassell, P.O. Box 115, Calverton, Virginia (the "Cassells").¹ This pleading also requested the Commission to extend the time period for filing of comments. The Cassells assert that Vyvx did not timely serve² the Chairman of the Board of Supervisors of Fauquier County, where they reside, and that they are aware of

¹ Additionally, by letter dated February 9, 1998, Mark Decot ("Decot"), 7967 Central Park Circle, Alexandria, Virginia, requests a hearing on these matters. Decot owns property in Orange County, Virginia, that is affected by the construction. Other complaints and comments have also been received.

² Attached to the pleading is a copy of the Notice that indicates it was received on March 3, 1998, rather than March 2, 1998. The Cassells assert that this one-day delay was "material and prejudicial" because the one-day delay prevented the matter from being aired at the regular monthly meeting of the Board of Supervisors, held on March 2, 1998.

"several citizens who have had 'less than satisfactory' encounters" with the Company and who might wish to make comment.

The Cassells' Request for Hearing ("Request") also represents that construction of the telecommunications facilities subject of this application continues to proceed without Commission approval. The Request contains allegations of illegal trespass and intimidation of landowners upon the part of the Company. It states that the Cassells "intend to file a trespass action against VYVX in the Fauquier County Circuit Court." The Cassells "specifically request that the Commission enter an Order scheduling a hearing on these complaints and that it impose such fines and sanctions on VYVX as are provided for by the Virginia Code."

On April 9, 1998, Vyvx filed its Answer to Cassell Objection, requesting that the Commission dismiss the Objection because it "states no basis in law or fact for the further extension of time; for convening a hearing; or denying [Vyvx'] Application." Vyvx asserted that the Fauquier County Circuit Court, not the Commission, would be the proper forum for resolution of the Cassell's complaint.

Also on April 9, 1998, the Board of Supervisors of Fauquier County ("Board") filed a Motion to File a Late Comment and, separately, a Comment. The Commission's Order of April 14, 1998, permitted receipt of the late-filed comment. The Board asked the Commission to "take all necessary and proper measures to require

Vyvx of Virginia, Inc. to fully and fairly abate any harm done to the citizens of the County of Fauquier" and suggested that those necessary measures might include denial of the requested certificate of public convenience and necessity "until Vyx of Virginia, Inc. comes into conformance with the laws of the Commonwealth and the rules and regulations of the State Corporation Commission." The Commission finds that the Board of Supervisors has shown sufficient cause to permit the late filing of its comment. However, the Commission, by this order will close the period, twice extended, for filing of comments on the application.

By this Order, the Commission will issue the Rule to Show Cause and set for hearing the matters contained in Staff's Request for Hearing. Those issues include the matters set out in the motions for the rule, i.e., whether the Company is in violation of a Commission order or in violation of the Virginia Code within the remedial jurisdiction of the Commission and the matters set out in the Company's application, i.e., whether the Commission should issue a certificate of public convenience and necessity to Vyx for its construction of the facilities in its application as amended.

As to the matters contained in the requests for the Rule to Show Cause, and in order to focus the issues herein, the Commission Staff shall file a statement of the facts it intends to offer to show that Vyx has violated a statute or a Commission

order, rule, or regulation, together with a recitation of the relief it seeks. Vyvx shall file a response admitting or denying each particular fact alleged by Staff, and any affirmative defenses it intends to rely upon. The parties are directed to stipulate all facts not in dispute.

The Commission does not intend to and will not intrude into the jurisdictional province of the Fauquier County Circuit Court with regard to action upon the Cassell's specific and individual complaints against the Company, but will receive all evidence relevant to the issues properly before it, including evidence from the Cassells, if they wish, and other parties that touch upon the issue of whether the public convenience and necessity requires the issuance of a certificate to Vyvx to authorize construction of a fiber optic telecommunications facility, i.e., the authorizations requested by Vyvx in its application.

The Commission will establish a hearing schedule, including prefiling of testimony from the Company and other interested participants. The Commission will deem each complaint referenced herein as a Protest and allow, but not require, any complainant to participate in the certificate hearing as a Protestant. Accordingly,

IT IS ORDERED THAT:

- (1) The Rule to Show Cause shall be issued.
- (2) The period for filing comment upon the application is hereby closed.

(3) On or before May 14, 1998, Vyvx shall file an original and five (5) copies of all testimony and exhibits it intends to offer in support of its application and shall serve a copy on each person on the attached service list.

(4) On or before May 21, 1998, the Commission Staff shall file, an original and five copies of its report or of any testimony and exhibits Staff intends to offer, and the Protestants may file an original and five copies of any testimony and exhibits any intends to offer, in evidence on the matters contained in the application and shall serve a copy on the Company and on each person on the attached service list.

(5) On or before May 28, 1998, Vyvx may file an original and five copies of any testimony it intends to offer in rebuttal to the prefiled testimony of the Protestants or to the prefiled testimony or report of the Commission Staff.

(6) On or before May 21, 1998, the Staff shall file a statement of the facts it intends to show to prove the matters set out in the Rule to Show Cause, together with its prayer for relief.

(7) On or before May 28, 1998, the Company shall file a response, admitting or denying each fact set out in the statement of the Staff, and shall identify any and all affirmative defenses it intends to rely upon in answering the Rule to Show Cause.

(8) On or before June 4, 1998, the Company and Staff shall file a stipulation of the undisputed facts herein and any request

for the Commission to receive testimony on the issues in the Rule to Show Cause.

(9) A public hearing to receive evidence and hear argument on the matters set forth above shall be scheduled for June 10, 1998, in the Commission's courtroom, beginning at 10:00 a.m. Anyone wishing to appear and give testimony as a public witness shall indicate an intention to do so by registering with the Commission Bailiff in the Courtroom at least 15 minutes prior to the commencement of the hearing.

(10) This matter is continued for further orders of the Commission.